



School Flexibility or School Failure?

Federal funds are a small portion of a school's fiscal resources. Across the country, schools receive only about 7% of their funds from the federal government, and most of these are earmarked for specific programs within the school, like the Title I program for disadvantaged children, or federal vocational education programs. Schools wishing to receive these earmarked funds, known as **categorical grants**, must apply for them and adhere to stated regulations. Increasingly, both federal and state governments are calling for funding of programs across an entire school (**schoolwide programs**), as well as **waivers** so schools do not have to follow every regulation.

These issues, lumped loosely under the idea of **school flexibility**, have significant consequences for the Latino community and other minority or special populations. Flexibility can give schools the freedom to craft programs that best serve their particular school population. But it can also allow them to use funds for all students and reduce services to special student populations—in effect, “losing” them—in an unaccountable amalgam of programs that are too broad. Categorical programs were originally devised to ensure that special populations—poor children, minorities, limited English speakers, migrants, the disabled, etc.—receive targeted assistance in needed areas. Federal dollars were seen as the way to supplement local schools' programs for those students most in need of special assistance and least likely to receive it. This intent may be nullified without stringent provisions, the exclusion of certain categorical programs from these flexibility policies, and solid accountability systems in such projects.

The issue

States and local school districts find offers of flexibility in the form of waivers and schoolwide projects

attractive because they appear to offer them increased fiscal and regulatory flexibility. The purpose of **schoolwide projects** is to give schools discretion to combine funds from certain categorical programs into overarching projects reaching every child in the school. Proponents say they free schools from duplicative programs. **Waivers** free schools from the numerous provisions of many categorical programs; that is, schools are waived from having to comply with certain regulations.

Because most revenue to schools comes mostly from states and localities, and because what is effective in schools varies, most schools favor this flexibility in the use of federal dollars, which appears to promote local control of the schools. These groups and other proponents of waivers and schoolwide projects assert that given increased flexibility, schools will have the incentive and ability to develop creative and innovative teaching methods and school programs. They believe this innovation will lead to overall increased student achievement and school improvement, both of which are essential to school reform. Proponents of schoolwide projects and waivers also see this as a local control issue. They favor proposals which reduce the bureaucracy and paperwork that is often connected to federal categorical grants.

Opponents of federal flexibility believe there are damaging implications of such actions, particularly if they are used as the primary medium for school reform. Providing blanket waivers creates the opportunity to nullify the legislative intent behind many targeted programs. Additional areas of controversy with waivers and schoolwide projects as a means of school reform can be summarized by two main themes: whether waivers and schoolwide programs really lead to student achievement and school improvement; and whether



such regulatory and fiscal flexibility is necessary as a part of school reform.

The implications of uncontrolled deregulation are troublesome for categorical programs and educational policy as a whole. Waivers could make programs such as bilingual education ineffective unless proper accountability mechanisms are in place to ensure limited-English proficient students are being served with funds allocated for this program. Policy implications are, perhaps, even more broad and severe. The move to an education policy agenda which favors schoolwide programs or even widespread use of waivers can easily lead to the next step of elimination of all categorical programs.

The effectiveness and success of schoolwide projects and waivers is dependent upon a school's "good faith effort" to help all students succeed, particularly those who may require special services. Not all schools, however, have the resources, training, or good will to ensure this success at the present time.

Many education advocates for special populations, specifically in the Latino community, do not favor the rampant use of waivers or widespread implementation of schoolwide projects. Therefore, these groups may be perceived as not favoring local control of the schools. This should not cloud the actual issue: the effectiveness and success of schoolwide projects and waivers is dependent upon a school's "good faith effort" to help all students succeed, particularly those who may require special services. Schools must be willing and able to serve limited-English proficient students, for example, with a program that effectively enables them to gain the high-level education that school reform promotes. Not all schools, however, have the resources, training, or good will to ensure this success at the present time. If funds from several programs targeting special students are amalgamated, there is no assurance that adequate funds will be available to provide them the additional help intended by legislation to ensure their educational success.

Combining funds into schoolwide programs or granting waivers allows schools the discretion to serve

disadvantaged and limited-English proficient children without regulatory scrutiny. Even civil rights safeguards can be nullified by schoolwide projects and waivers.

Past experience has shown that good will is not enough to guarantee equitable policy. We have only to look at the history of desegregation, ability tracking, and affirmative action. In February 1994, for example, the U.S. District Court for the Northern District of Illinois concluded that one of its school districts discriminated against minority students in its ability-grouping policies and other practices. The district was put under court order to desegregate by the end of the year. A 1994 Harvard University study found that schools today are more segregated than ever before. The U.S. Department of Education's Office of Civil Rights continues to receive thousands of discrimination complaints each year. Clearly, not enough progress has been made since the 1954 decision of Brown v. the Board of Education. Likewise, affirmative action, while making considerable strides in providing minorities with opportunities for higher education, requires continuing court mandates to ensure compliance by colleges and universities. It is important to understand the background and historic patterns from which waivers and schoolwide projects have emerged.

Background

The push for waivers and schoolwide projects at the federal level began in the early 1980's. Prior to this, proposals to grant waiver authority and other types of flexibility measures had been developed at the state level. Ronald Reagan struck a major theme when, in 1981, he campaigned for the presidential election on a platform of abolishing the newly created Department of Education. His aim was to reduce the role of the federal government--and federal agency bureaucracy--in education. This theme became most visible in the administration's numerous proposals to establish **block grants**, which allocate a fixed sum of money to local governments and give them a high degree of discretion in how it is spent. Block grant proposals greatly reduced the amount of categorical programs which served specific populations.

In 1981, the Education Block Grant was created under Chapter 2 of the Education Consolidation and



Improvement Act (ECIA). Twenty-nine education programs formerly established by the Elementary and Secondary Education Act of 1965 were repealed and replaced by Chapter 2. To assist in distributing funds, states established "high-cost" classifications for students, and weighted funds accordingly. The definition of "high-cost" was left to the states. Thus, for example, some states' funds were distributed on the basis of low income, while others were not. Additionally, only seven states included limited-English proficiency as a high-cost factor. This caused funding patterns to vary greatly from state to state.

The Hawkins-Stafford School Improvement Act that reauthorized Chapter 1 of the Elementary and Secondary Education Act (ESEA) in 1988 included an amendment which allowed all campuses with a substantial concentration (75%) of high poverty students to put their Chapter 1 funds into schoolwide projects serving every child in the school, not just the specially-targeted ones. This furthered the process of reducing the number of categorical programs.

In 1993, the Clinton Administration began to advocate for an increasing amount of schoolwide flexibility by encouraging the use of waivers and schoolwide projects. In drafting its recommendations and analysis for the 1994 reauthorization of Chapter 1, the Department of Education successfully sought to expand the latitude for eligibility in schoolwide projects. The expansion of schoolwide projects was achieved by significantly decreasing the poverty threshold for eligibility from 75% to 50% in 1996.

The shift in the 1990's to a heavy reliance on schoolwide projects and an increased use of waivers is not very different from the block grants of the 1980's. Both cite school flexibility and local control as the keys to school creativity, innovation, and improvement.

It would appear that the roles of federal, state, and local governments are shifting. Under the Reagan and Bush administrations, the majority of the Congress did not favor block grants or uncontrolled deregulation, although administration officials consistently advocated for them. The Clinton administration now advocates what the members of its own political party had opposed not ten years ago. President Clinton, Secretary of Education Richard Riley, and Deputy Secretary Madeleine Kunin are all former governors. Marshall

Smith, the Undersecretary, is a former superintendent of schools. All understand the struggles schools are faced with, and have sought to ease their regulatory burdens.

Congress also now favors this movement. Some members of Congress say that their intent is to send a message to schools that **pull-out programs**, which physically remove students from their regular classroom setting to provide additional instruction, are not effective.

In 1993, the Clinton Administration began to advocate for an increasing amount of schoolwide flexibility by encouraging the use of waivers and schoolwide projects. It now advocates what the members of its own political party had opposed not ten years ago.

and must be discontinued. Schoolwide projects, which allow schools to combine federal monies, discourage pull-out programs directly by placing an emphasis on all students having access to high-quality regular school programs and receiving supplemental instruction at the same time or in addition to the regular curriculum.

Even while the Congress consistently advocates school flexibility, it acknowledges the danger of unregulated flexibility proposals. For instance, in drafting the 1994 reauthorization of ESEA, Congress immediately exempted the Individuals with Disabilities Education Act from schoolwide programs, thus implicitly acknowledging how the expansion of such projects can harm special populations that were historically underserved until categorical programs were established.

Like disabled children, Latino students have been served by specific categorical programs such as bilingual education and Chapter 1. Other categorical programs have also assisted the Latino population by

This Issue Brief was written by Melissa Chabran and Elizabeth Weiser Ramirez for the ASPIRA Association, Inc., National Office. Ms. Chabran's time was funded through the Everett Public Policy Internship Program. This document was produced by the ASPIRA Institute for Policy Research, which receives core funding from the Anheuser-Busch Companies.



targeting funds to services which speak to specific needs they may have. Approximately 80 percent of participants in the Migrant Education Program, for example, are Latinos. The Perkins Act not only assists students in accessing vocational instruction but requirements of the act specify the need to serve special populations, such as limited-English proficient children. Many if not all of the categorical programs that serve Latino students seek to reach populations that may need specific, detailed assistance in achieving desired educational outcomes. Increasing regulatory and fiscal flexibility has serious implications for these programs and thus for the Latino students they serve.

Is there a need for waivers?

Evidence is unclear whether waivers and schoolwide projects lead to school improvement and enhanced achievement, especially for minority and other special populations. A recent GAO study, *Regulatory Flexibility in School* (1994), concluded that information on the effectiveness of schoolwide projects and the use of waivers on student achievement was not available and/or not conclusive, especially regarding minority and special populations. Adequate assessment mechanisms either did not exist for special populations, or were so new that results were not yet reliable.

If it is unclear that increasing waiver authority and expanding the number of schoolwide projects is beneficial to students, especially those of minority communities, it should not be so quickly advanced. Opponents of these projects believe that the nation may be regressing to an era of block grants. They fear that the focus will shift to "general education" rather than on attaining the higher order skills that school reform proposals promote.

Advocates of categorical programs also question whether fiscal and regulatory flexibility are necessary to promote innovation and creativity, both of which are crucial elements of school reform. There is no research that supports this. Instead, anecdotal information and isolated events are the only available data. Perhaps fiscal and regulatory flexibility are the proxies for other problems. An inadequate or inequitable funding system or poor communication between school and community may be the true problems. These issues may then be masked by what is perceived as "problematic regulations."

For instance, one of the components of Washington State's Schools for the 21st Century program is that it allows schools to request waivers of certain state regulations. This is a competitive process and waivers are granted only if schools demonstrate that the rules impede implementation of an improvement program. After waivers were granted and the improvement plan implemented, program coordinators and principals who had requested waivers described them as ineffective unless they were followed by additional appropriations.

A recent GAO study, Regulatory Flexibility in School (1994), concluded that information on the effectiveness of schoolwide projects and the use of waivers on student achievement was not available and/or not conclusive, especially regarding minority and special populations.

Other examples of local waiver programs also indicate that not all schools want increased flexibility. North Carolina's 1989 Flexibility and Accountability Statue offers schools waivers of certain regulations, but not all schools take advantage of it.

Federal regulations tied to funding for specific programs may not be all that problematic in the end. Many local reform projects have chosen a less sweeping way to deal with program regulations. They have identified critical, specific regulatory provisions and requirements which prevent school improvement, and provide waivers and establish schoolwide projects on a case-by-case basis. Many of these schools have succeeded in improving their curriculum and student achievement with this careful approach to flexibility.

Likewise, the 1994 GAO report identifies schools around the nation that are able to develop innovative strategies and curricula under existing law. This can be seen in studies conducted in the states of Washington, California and South Carolina. These states cited effective school innovation and improvement accomplished under existing law without any waiver authority. This is also the case with several schools in Chicago cited in the report. It is possible that a more feasible approach to school flexibility and true improvement is granting waivers and schoolwide projects on a case-by-case basis, with increased focus on student outcomes.

Advocates for disadvantaged students also believe that school reform systems that include waivers and schoolwide projects need to include provisions that ensure that any action will be consistent with the legislative intent behind funding appropriated for specific practices. There are several ways to accomplish this, all focusing on valid accountability systems.

A valid system of accountability

A case study of four states' methods of deregulation suggests that the effects of programs which increase waiver authority and those that allow for the commingling of funds are strongly dependent on the state and local context in which they are implemented. Deregulation does not have the same effect at all sites. Thus, there must be a system that identifies schools and districts where deregulation is clearly more harmful than helpful so that these projects can be discontinued.

Current schoolwide projects under Chapter 1 are subject to two evaluations: regular Chapter 1 evaluation and a special evaluation after three years. At the end of the third year of the schoolwide project, achievement gains of educationally disadvantaged students in schoolwide projects are compared with those scores of students not in schoolwide projects. What is troubling about this assessment mechanism is that it is very new. The 1993 Department of Education-sponsored study of schoolwide projects concluded that a majority of the schools with such projects were in operation for less than three years, and thus had little preliminary results for evaluation. In addition, gains of special populations, such as limited-English proficient students, were not separately assessed or analyzed to determine the effect that schoolwide projects had on these populations.

Another issue is the incompatibility of dramatically increasing schoolwide projects at the same time that accountability systems are changed to incorporate multiple means of assessment. Under the 1988 Hawkins-Stafford Amendments, achievement gains of educationally disadvantaged students in schoolwide projects must be compared with those not in such projects, or with the achievement gains of the school prior to adopting schoolwide status. Since new multiple assessment mechanisms are only now being developed for large-scale implementation, these evaluations cannot be used for schoolwide accountability purposes for several years.

This is particularly troublesome for limited-English proficient students, since language appropriate assessments are very new or even nonexistent in schools. In several cases, schoolwide projects have been implemented before these assessment mechanisms were developed. Thus, there are no data that indicate how limited-English proficient students were performing before a school became a schoolwide project; that is, no baseline data exist that would allow one to appropriately measure how these students are affected by schoolwide projects. This will be increasingly problematic if schoolwide projects increase. The Department of Education estimates that the number of districts eligible to participate in schoolwide projects will more than double, to 22,879, under the new reauthorization of Chapter 1.

...language appropriate assessments are very new or even nonexistent in schools. In several cases, schoolwide projects have been implemented before these assessment mechanisms were developed. Thus, there are no baseline data to evaluate how limited-English proficient students are affected by schoolwide projects.

According to the Department of Education schoolwide study, schools with a high concentration of limited-English proficient students experienced no change in monitoring or technical assistance during the implementation of their schoolwide project, whereas most other schools with such projects noticed an increase in both areas. Given the limited data on special populations' success under schoolwide projects, their schools should be monitored at least at the same rate as other schools to be certain they are receiving the appropriate amount and quality of instruction and services. The fact that they are not monitored casts doubt on whether they are receiving the targeted assistance they were meant to receive as mandated by categorical programs.

The effects that waiver authority have on special populations are also not certain. Case studies on different models of deregulation in schools suggest that, as with schoolwide projects, assessment mechanisms are either very new or nonexistent, preventing proper evaluations of these programs. Waiver authority in-

cluded in federal legislation approved in 1994 (Goals 2000, the Improving America's Schools Act, the School-to-Work Opportunities Act, and the Re-employment Act) does include provisions for standards, exemptions, and public participation in the waiver-granting process. However, each of these smaller programs separately lack the power of waivers and waiver authority granted under schoolwide programs found in the much larger Chapter 1 of the Elementary and Secondary Education Act (ESEA). While the other pieces of legislation clearly describe what standards schools are expected to follow, even with waiver authority, current provisions in the reauthorized ESEA offer few safeguards to ensure accountability. This is a source of deep concern because the Elementary and Secondary Education Act is much more powerful because it provides the bulk of federal education dollars to most school districts. Thus, its provisions on waivers will serve to influence school reform for years to come.

The effects of schoolwide projects and waivers on special populations could be determined through disaggregated data analysis. If the effects of such projects prove to be positive, then there would be an argument for continuation. Only if gains are consistent should expansion of the projects be considered.

Disaggregated data collection--breaking out data gathered on school success by race/ethnicity, gender, or disability--would enhance school accountability for equity. The effects of schoolwide projects and waivers on migrant students, homeless students, and students with limited-English proficiency, for example, could be determined through disaggregated analysis. If the effects of such projects prove to be positive, as reflected in achievement gains and other indicators such as retention rates and parental involvement, then this would present an argument for continuation of the projects. Only if gains are consistent should expansion of the projects be considered.

Balance of power

The present system for reviewing waiver requests goes through the office of the Secretary of Education, with the public and interest groups given public notice and an opportunity to comment on the request for a new waiver. This may seem like sufficient public input. However, if "public notice" means nothing more than a notice in the *Federal Register*, or even an announcement (in small type) in the local newspaper, it will also have negative implications for special populations. Such a system shuts out most parents, particularly minority parents with little knowledge of the system and little reason to read through the "public announcements" section of their city paper. If the true purpose of deregulation is to promote local control of the schools, as proponents claim, parents should be allowed appropriate input, including both sufficient notice and public hearings to comment on the changes their local school is proposing.

Since the process of granting waiver authority rests in the power of the executive branch, specifically in the Secretary of Education, it is possible that the intent of the legislation will be nullified. The will of the Congress, as expressed in the particular requirements included in the legislation, is subject to being overridden by an administration which grants waivers of those requirements it opposes.

Legislative review of waivers granted could help ensure Congressional intent is not overridden. However, in a worst-case scenario, there are also concerns with the waiver review mechanism of the powerful ESEA. Evaluation of waivers and how programs are affected by them are not exempted provisions from waivers in ESEA. Thus, a school can choose to waive the requirement for evaluation of waiver authority.

An approach which maintains the balance of powers would remove regulatory barriers to school flexibility legislatively, rather than nullifying a law which may have been recently authorized. For example, the Perkins Vocational Education Act, reauthorized in 1992, contains provisions for access, assessment, and services for special populations and requires dissemination of information to students and parents about vocational education opportunities. Congress sought to enhance vocational education flexibility by creating a program-wide, coordinated set of requirements and